

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

MBA

Mailed: February 2, 2011

Opposition No. 91178356

Cosmetic Warriors Ltd.

v.

Cygen Cosmeceuticals

Michael B. Adlin, Interlocutory Attorney:

On October 26, 2010, the Board issued an order (the "Prior Order") which granted opposer's motion for sanctions in part and ordered applicant to serve documents responsive to opposer's discovery requests within 30 days. The order provided:

In the event applicant fails to comply with the requirements of this order, and opposer files a motion for sanctions based thereon, judgment will be entered in opposer's favor and against applicant, and applicant's time for complying with this order is as set herein and will not be extended absent extraordinary and meticulously-detailed circumstances.

Prior Order at 11-12 (emphasis in original). Applicant failed to comply with the Prior Order within 30 days, or thereafter. Opposer filed a second motion for sanctions on December 6, 2010, based on applicant's noncompliance with the Prior Order. This case now comes up for consideration of applicant's motion, filed December 17, 2010, for an

extension of time to respond to opposer's second motion for sanctions. Opposer contests the motion.

Motion for Extension

Applicant's motion is based entirely on attorney argument, and contains no evidentiary support, by way of declaration testimony or otherwise. The motion indicates that: (1) the parties are "discussing possible settlement terms;" (2) applicant's counsel "has been out of the office recently" and his office will be closed until January 3, 2011; (3) applicant has not complied with the Board's order or "provided a reason for its apparent failure to comply;" and (4) applicant and its counsel are "having difficulties" communicating.

In response, opposer claims that "the parties are not and have not been engaged in any meaningful settlement discussions and do not appear to be remotely close to an agreement concerning resolution of this case." Furthermore, "there is no reason to believe that extending the time for Applicant to respond to Opposer's motion will result in anything other than further delay in their ultimate resolution."

Because applicant filed its motion for extension prior to expiration of the deadline for its response to the motion for sanctions, it must establish "good cause" for the requested extension. Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509

(2d ed. rev. 2004). Generally, "the Board is liberal in granting extensions of time before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused." American Vitamin Products Inc. v. Dow Brands Inc., 22 USPQ2d 1313, 1315 (TTAB 1992).

In this case, applicant has not established good cause, especially given the circumstances of this case. First, applicant's motion pertains primarily to the period of time after opposer filed its second motion for sanctions. The only explanation for applicant's failure to comply with the Prior Order within 30 days as ordered is that applicant has not provided any documents and has had "difficulties" communicating with its attorney. Neither "explanation" constitutes good cause, and both illustrate noncompliance with a clear and unequivocal Board order. Second, applicant's motion is entirely unsupported, much less "meticulously-detailed." Third, perceived settlement negotiations are not good cause, especially where opposer disputes that there are meaningful settlement negotiations and more importantly did not grant an extension of time for applicant's response. Fairline Boats plc v. New Howmar Boats Corp., 59 USPQ2d 1479, 1480 (TTAB 2000) (citing Instruments SA, Inc. v. ASI Instruments, Inc., 53 USPQ2d 1925 (TTAB 1999)). Fourth, applicant has not indicated any

obstacle to responding to opposer's motion between December 6, 2010 and whenever the unspecified "family matter" occurred, and applicant's counsel's closing of its office was known in advance and could be planned for but was not, or was unplanned in advance and scheduled at a time when applicant knew it had obligations in this proceeding. Finally, given the circumstances outlined in the Prior Order and the clear and unequivocal warning in the Prior Order, applicant has been guilty of negligence, and none of the circumstances set forth in its motion are "extraordinary." For all of these reasons, applicant's motion for extension is hereby **DENIED**.

Motion for Sanctions

Turning to opposer's second motion for sanctions, filed December 6, 2010, "when the Board denies a motion to extend, dates may remain as set (or reset)." Fairline Boats, 59 USPQ2d at 1480. Accordingly, opposer's second motion for sanctions is hereby **GRANTED**, as conceded, because applicant failed to respond thereto. See Trademark Rules 2.120(g) and 2.127(a). Accordingly, judgment is hereby entered against applicant, the opposition is sustained, applicant's counterclaim is dismissed with prejudice and registration to applicant is refused.

***By the Trademark Trial
and Appeal Board***